

REFERENCE TITLE: air quality; cumulative modeling

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2543

Introduced by
Representatives Sinema, Ableser, Chabin; Campbell CH, Lopes, Senator
Landrum Taylor

AN ACT

AMENDING SECTIONS 49-426 AND 49-480, ARIZONA REVISED STATUTES; RELATING TO
AIR QUALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 49-426, Arizona Revised Statutes, is amended to
3 read:
4 49-426. Permits; duties of director; exceptions; applications;
5 objections; fees
6 A. A permit shall:
7 1. Be issued by the director in compliance with the terms of this
8 section.
9 2. Be required for any person seeking a compliance extension pursuant
10 to section 49-426.03, subsection B, paragraph 3 and section 112(a)(5) of the
11 clean air act and for any person beginning actual construction of or
12 operating any source, except as prescribed in subsection B of this section or
13 section 49-426.01.
14 B. ~~The provisions of~~ This section ~~shall~~ DOES not apply to motor
15 vehicles, to agricultural vehicles or agricultural equipment used in normal
16 farm operations, or to fuel burning equipment which, at a location or
17 property other than a one or two family residence, is rated at less than one
18 million British thermal units per hour. The director may establish by rule
19 additional sources or classifications of sources for which a permit is not
20 required and pollutant-emitting activities and emissions units at permitted
21 sources that are not required to be included in the permit. The director
22 shall not adopt such rules unless the director makes a written finding with
23 supporting facts that the exempted source, class of sources,
24 pollutant-emitting activities or emissions units will have an insignificant
25 adverse impact on air quality. In adopting these rules, the director may
26 consider any rule that is adopted by the administrator pursuant to section
27 502 of the clean air act and that exempts one or more source categories from
28 the requirement to obtain a permit under title V of the clean air act.
29 C. Every application for a permit shall be filed in the manner and
30 form prescribed by the director, and shall contain all the information
31 necessary to enable the director to make the determination to grant or deny
32 such application. THE DIRECTOR MAY REQUIRE THAT AN APPLICANT FOR A PERMIT OR
33 A PERMIT REVISION PURSUANT TO SECTION 49-426.01 INCLUDE CONSIDERATION OF THE
34 CUMULATIVE IMPACT OF PARTICULATE MATTER EMISSIONS FROM SOURCES IN PROXIMITY
35 TO THE APPLICANT'S SOURCE IF THE APPLICANT IS SEEKING APPROVAL FOR NEW
36 EMISSIONS OR AN INCREASE IN EMISSIONS OF FIVE OR MORE TONS PER YEAR OF
37 PARTICULATE MATTER. THE DIRECTOR MAY REQUIRE THE APPLICANT TO CONDUCT THE
38 CUMULATIVE IMPACT MODELING OR TO SUBMIT SUFFICIENT INFORMATION FOR THE
39 DEPARTMENT TO PERFORM THE MODELING. The director shall establish by rule
40 requirements for permit applications, including the standard application form
41 for title V sources. The director shall establish by rule requirements for
42 applications for general permits. An application for a permit issued
43 pursuant to title V of the clean air act shall include a compliance plan that
44 describes how the applicant will comply with all of the applicable
45 requirements of this chapter and the clean air act, including a schedule of

1 compliance and a schedule under which progress reports will be submitted to
2 the director at least every six months. The director may require that such
3 application include all sources that are used or to be used by the applicant
4 in a certain process or a single facility or location. Before acting on an
5 application for a permit, the director may require the applicant to furnish
6 further information or further plans or specifications. The director shall
7 act, within a reasonable time, on such application and shall notify the
8 applicant in writing of the proposed approval or denial of such application,
9 except that the director may have a reasonable period of time in which to
10 gather information, inspect premises, and issue such permits. The director
11 shall adopt rules that establish procedures for determining when applications
12 are complete, for processing applications and for reviewing permit
13 actions. The director shall also establish by rule criteria for determining
14 reasonable times for processing permit applications. Rules adopted pursuant
15 to this subsection for permits issued pursuant to title V of the clean air
16 act shall conform to the requirements of section 505(a) of the clean air act.

17 D. The director shall give notice of a proposed permit for a source
18 required to obtain a permit pursuant to title V of the clean air act once
19 each week for two consecutive weeks in two newspapers of general circulation
20 in the county in which the source is or will be located. The notice shall
21 describe the proposed permit and air contaminants to be emitted and shall
22 state that any person may submit comments on the proposed permit and may
23 request a public hearing. The director shall require the applicant at the
24 time of the first notice to post the site where the source is or may be
25 located. If permitted by federal, state and local law, the posting shall be
26 prominently placed at a site that is under the applicant's legal control and
27 that is adjacent to the nearest public roadway. The posting shall be visible
28 to the public using the public roadway and shall contain the information in
29 the notice that is published by the director. If a public hearing is
30 requested, the director shall require the applicant to place an additional
31 posting that provides notice of the public hearing. A posting shall be
32 maintained until the public comment period on the proposed permit is closed.
33 The director shall make available to the public notices of proposed permits.
34 Each public notice that is issued under this chapter shall be mailed to the
35 permit applicant, to the affected federal, state and local agencies and to
36 those persons who have requested in writing copies of proposed permit action
37 notices. During the public comment period, any person may submit a request
38 to the department to conduct a public hearing for the purpose of receiving
39 oral or written comments on the proposed permit. A written comment shall
40 state the name and mailing address of the person, shall be signed by the
41 person, his agent or his attorney and shall clearly set forth reasons why the
42 permit should or should not be issued. Grounds for comment are limited to
43 whether the proposed permit meets the criteria for issuance prescribed in
44 this section or in section 49-427. The department shall consider and prepare
45 written responses to all comments received during the public comment period

1 including comments made at a public hearing conducted by the department. At
2 the time a final permit decision is made, copies of the department's
3 responses shall be made available to the applicant and any person who
4 commented on the proposed permit.

5 E. Permits or revisions issued pursuant to this section or section
6 49-426.01 may be issued subject to such terms and conditions as are
7 consistent with the requirements of this article, article 1 of this chapter
8 and the clean air act and are found by the director to be necessary,
9 following public notice and an opportunity for a public hearing as provided
10 in subsection D or H of this section or in section 49-426.01, and subject to
11 payment of a reasonable fee to be determined as follows:

12 1. For a source that is required to obtain a permit pursuant to title
13 V of the clean air act, the director shall establish by rule a system of fees
14 that is consistent with and equivalent to that prescribed by section 502 of
15 the clean air act. These rules shall prescribe procedures for increasing the
16 fee each year by the percentage if any by which the consumer price index for
17 the immediately preceding calendar year exceeds the consumer price index for
18 calendar year 1989.

19 2. For a facility that is required to obtain a permit pursuant to this
20 chapter but that is not required to obtain a permit pursuant to title V of
21 the clean air act, the director shall determine a fee based on the total
22 actual cost of processing the permit application, but not exceeding
23 twenty-five thousand dollars.

24 The director shall establish an annual inspection fee, not to exceed the
25 average cost of inspection. The director shall adopt, by rule, criteria for
26 determining fees and for public hearings.

27 F. Permits issued pursuant to this section shall be issued for a
28 period of five years.

29 G. Except as provided in subsection H of this section, any person
30 burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in
31 any machine, incinerator or device shall first obtain a permit from the
32 director. Any permit issued by the director under this subsection shall
33 contain, at a minimum, conditions governing:

34 1. Limitations on the types, amounts and feed rates of used oil, used
35 oil fuel, hazardous waste or hazardous waste fuel which may be burned.

36 2. The frequency and types of fuel testing to be conducted by the
37 person.

38 3. The frequency and type of emissions testing or monitoring to be
39 conducted by the person.

40 4. Requirements for record keeping and reporting.

41 5. Numeric emission limitations expressed in pounds per hour and tons
42 per year for air contaminants to be emitted from the facility burning
43 off-specification used oil fuel, hazardous waste or hazardous waste fuel.

1 H. The director may issue a general permit for a defined class of
2 facilities if the class contains a large number of facilities that are
3 substantially similar in nature and that have substantially similar emissions
4 and if the following conditions are met:

5 1. A general permit shall comply with all of the requirements for
6 permits prescribed by this section except for the requirements of subsection
7 D of this section and shall be consistent with the clean air act.

8 2. The director shall give notice of the proposed general permit once
9 each week for two consecutive weeks in a newspaper of general circulation in
10 each county. The notice shall describe the proposed general permit, the
11 general class of sources that would be subject to the proposed permit and the
12 air contaminants to be emitted. The notice shall also state that any person
13 may submit comments on the proposed general permit and may request a public
14 hearing. A written comment shall state the name of the person and the
15 person's agent or attorney and shall clearly set forth reasons why the
16 general permit should or should not be issued. Grounds for comment are
17 limited to whether the proposed general permit meets the criteria for
18 issuance prescribed in this section or section 49-427.

19 3. On issuance of a general permit any person seeking to permit a
20 source under this subsection shall submit an application pursuant to
21 subsection C of this section.

22 4. If the director approves an application to be permitted under a
23 general permit, the director shall provide notice of the approval in a
24 newspaper of general circulation in the county in which the source is or will
25 be located.

26 5. If a person violates a general permit, the director may require the
27 source to obtain a permit pursuant to subsection A of this section.

28 6. A general permit may be revoked or revised at any time by the
29 director if necessary to comply with this chapter. If the director revokes
30 or revises a general permit, the director shall notify all persons whose
31 sources are affected by the revocation or revision and shall include notice
32 of procedures to obtain a permit pursuant to subsection A of this section or
33 notice of procedures for compliance with the revisions.

34 7. The director by rule shall adopt procedures for the issuance of
35 general permits.

36 8. The director may adopt conditions in a general permit applicable to
37 sources located in a specified geographic area either independently of or
38 upon petition by a county air pollution control officer.

39 I. Permits issued pursuant to this section for a source required to
40 obtain a permit under title V of the clean air act shall contain all of the
41 following:

42 1. Conditions reflecting all applicable requirements of this article
43 and rules adopted pursuant to this article.

44 2. Enforceable emission limitations and standards.

45 3. A schedule for compliance, if applicable.

1 4. The requirement to submit at least every six months the results of
2 any required monitoring.

3 5. Any other conditions that are necessary to assure compliance with
4 this article and the clean air act, including the applicable implementation
5 plan.

6 J. The director may refuse to issue any permit to any source subject
7 to the requirements of title V of the clean air act if the administrator
8 objects to its issuance in a timely manner as prescribed under title V of the
9 act.

10 K. If an applicant has submitted a timely and complete application for
11 a permit required under this section, but final action has not been taken on
12 that application, failure to obtain a permit shall not be a violation of this
13 chapter unless the delay in final action is due to the failure of the
14 applicant to submit information required or requested to process the
15 application. This subsection does not apply to any person required to obtain
16 a permit before commencing construction of a source as required under this
17 section or any person seeking a permit revision as provided under section
18 49-426.01.

19 L. The director may issue a single permit authorizing emissions from
20 similar operations at multiple temporary locations, if the permit includes
21 conditions that will assure compliance with all applicable requirements of
22 this chapter and the clean air act at all locations. Any permit issued
23 pursuant to this subsection shall require the applicant to notify the
24 director in advance of each change in location. In issuing a single permit,
25 the director may require a separate permit fee for operations at each
26 location.

27 M. In the case of a permit with a term of three or more years issued
28 pursuant to the requirements of title V of the clean air act to a major
29 source, the director shall require revisions to the permit to incorporate
30 applicable standards and regulations adopted by the administrator pursuant to
31 the clean air act after the issuance of the permit. The director shall
32 require any revisions as expeditiously as practicable, but not later than
33 eighteen months after the promulgation of such standards and regulations. No
34 permit revision shall be required if the effective date of standards and
35 regulations is after the expiration of the permit. Any permit revision
36 required pursuant to this subsection shall be treated as a permit renewal.

37 N. Any permit issued pursuant to the requirements of this article and
38 title V of the clean air act to a unit subject to the provisions of title IV
39 of the clean air act shall include conditions prohibiting all of the
40 following:

41 1. Annual emissions of sulfur dioxide in excess of the number of
42 allowances to emit sulfur dioxide held by the owners or operators of the unit
43 or by the designated representative of the owners or operators.

44 2. Amounts in excess of applicable emission rates.

1 3. The use of any allowance prior to the year for which it was
2 allocated.

3 4. Contravention of any other provision of the permit.

4 O. The director shall adopt a rule specifying the notice, public
5 participation requirements and other permit issuance procedures for permits
6 that are not issued pursuant to title V of the clean air act.

7 P. In determining whether a permitting threshold established pursuant
8 to this section applies to an existing source, the director shall exclude
9 particulate matter that is not subject to a national ambient air quality
10 standard under the clean air act.

11 Sec. 2. Section 49-480, Arizona Revised Statutes, is amended to read:
12 49-480. Permits; fees

13 A. The board of supervisors may adopt a program for the review,
14 issuance, revision, administration and enforcement of permits and for public
15 review of proposed permits for sources that are subject to section 49-426,
16 subsection A, that are not under the jurisdiction of the state pursuant to
17 section 49-402 and that are not otherwise exempt pursuant to section 49-426,
18 subsection B and subsection K of this section. This program shall include
19 provisions for administration, inspection and enforcement of general permits
20 issued pursuant to section 49-426, subsection H and subsection J of this
21 section.

22 B. Procedures for the review, issuance, revision and administration of
23 permits issued pursuant to this section and required to be obtained pursuant
24 to title V of the clean air act including sources that emit hazardous air
25 pollutants shall be substantially identical to procedures for the review,
26 issuance, revision and administration of permits issued by the department
27 under this chapter. Such procedures shall comply with the requirements of
28 sections 165, 173 and 408 and titles III and V of the clean air act and
29 implementing regulations for sources subject to titles III and V of the clean
30 air act. Procedures for the review, issuance, revision and administration of
31 permits issued pursuant to this section and not required to be obtained
32 pursuant to title V of the clean air act shall impose no greater procedural
33 burden on the permit applicant than procedures for the review, issuance,
34 revision and administration of permits issued by the department under
35 sections 49-426 and 49-426.01 and other applicable provisions of this
36 chapter. **THE CONTROL OFFICER MAY REQUIRE THAT AN APPLICANT FOR A PERMIT OR A
37 PERMIT REVISION PURSUANT TO SECTION 49-480.01 INCLUDE CONSIDERATION OF THE
38 CUMULATIVE IMPACT OF PARTICULATE MATTER EMISSIONS FROM SOURCES IN PROXIMITY
39 TO THE APPLICANT'S SOURCE IF THE APPLICANT IS SEEKING APPROVAL FOR NEW
40 EMISSIONS OR AN INCREASE IN EMISSIONS OF FIVE OR MORE TONS PER YEAR OF
41 PARTICULATE MATTER. THE CONTROL OFFICER MAY REQUIRE THE APPLICANT TO CONDUCT
42 THE CUMULATIVE IMPACT MODELING OR TO SUBMIT SUFFICIENT INFORMATION FOR THE
43 DEPARTMENT TO PERFORM THE MODELING.**

1 C. Upon adoption of a permit program by the board of supervisors
2 pursuant to this section, no person may begin actual construction, operate or
3 make a modification to any source subject to the permit program without
4 complying with the requirements of that program.

5 D. Permits issued pursuant to a program adopted under this section are
6 subject to payment of a reasonable fee to be determined as follows:

7 1. For any source required to obtain a permit under title V of the
8 clean air act, the board of supervisors shall establish by rule a system of
9 fees consistent with and equivalent to that prescribed under section 502 of
10 the clean air act. Such system shall prescribe procedures for increasing the
11 fee each year by the percentage, if any by which the consumer price index for
12 the most recent calendar year ending before the beginning of such year
13 exceeds the consumer price index for the calendar year 1989.

14 2. For any facility subject to the permitting requirements of this
15 chapter but not required to obtain a permit under title V of the clean air
16 act, the board of supervisors shall determine a permit fee based on all
17 reasonable direct and indirect costs required to administer the permit, but
18 not exceeding twenty-five thousand dollars.

19 The board of supervisors shall establish an annual inspection fee, not to
20 exceed the average cost of services.

21 E. Funds received for permits issued pursuant to this section shall be
22 deposited in a special public health fund and shall be used by the control
23 officer to defray the costs of implementing this article.

24 F. Permits issued pursuant to this section for a source required to
25 obtain a permit under title V of the clean air act shall, and for a source
26 that is not required to obtain a title V permit may, contain all of the
27 following:

28 1. Conditions reflecting all applicable requirements of this article
29 and rules adopted pursuant to this article.

30 2. Enforceable emission limitations and standards.

31 3. A schedule for compliance, if applicable.

32 4. The requirement to submit at least every six months the results of
33 any required monitoring.

34 5. Any other conditions that are necessary to assure compliance with
35 this article and the clean air act, including the applicable implementation
36 plan.

37 G. The control officer may refuse to issue any permit to any source
38 subject to the requirements of title V of the clean air act if the
39 administrator objects to its issuance in a timely manner as prescribed under
40 title V of the act.

41 H. In the case of a permit with a term of three or more years issued
42 pursuant to the requirements of title V of the clean air act to a major
43 source, the control officer shall require revisions to the permit to
44 incorporate applicable standards and regulations adopted by the administrator
45 pursuant to the clean air act after the issuance of the permit. The control

1 officer shall require any revisions as expeditiously as practicable but not
2 later than eighteen months after the promulgation of such standards and
3 regulations. No permit revision shall be required if the effective date of
4 the standards and regulations is after the expiration of the permit. Any
5 permit revision required pursuant to this subsection shall be treated as a
6 permit renewal.

7 I. Except as provided in section 49-426, subsection B and subsection A
8 of this section, any person burning used oil, used oil fuel, hazardous waste
9 or hazardous waste fuel in any machine, incinerator or device shall first
10 obtain a permit from the control officer. Any permit issued by the control
11 officer under this subsection shall contain, at a minimum, conditions
12 governing:

13 1. Limitations on the types, amounts and feed rates of used oil, used
14 oil fuel, hazardous waste or hazardous waste fuel which may be burned.

15 2. The frequency and types of fuel testing to be conducted by the
16 person.

17 3. The frequency and type of emissions testing or monitoring to be
18 conducted by the person.

19 4. Requirements for record keeping and reporting.

20 5. Numeric emission limitations expressed in pounds per hour and tons
21 per year for air contaminants to be emitted from the facility burning used
22 oil, used oil fuel, hazardous waste or hazardous waste fuel.

23 J. The board of supervisors may authorize by rule the control officer
24 to issue a general permit for a defined class of facilities if that class of
25 facilities has not been issued a general permit by the director for sources
26 in that county pursuant to section 49-426, subsection H. The criteria for
27 issuance of a general permit are those applicable to the director pursuant to
28 section 49-426, subsection G.

29 K. The board of supervisors may identify by rule sources or
30 classifications of sources for which a permit is not required and
31 pollutant-emitting activities and emissions units at permitted sources that
32 are not subject to inclusion in the permit. The criteria for exemptions
33 granted pursuant to this subsection are those applicable to exemptions
34 granted by the director pursuant to section 49-426, subsection B.

35 L. In determining whether a permitting threshold established pursuant
36 to this section applies to an existing source, the control officer shall
37 exclude particulate matter that is not subject to a national ambient air
38 quality standard under the clean air act.

39 M. The board of supervisors may adopt a rule or ordinance that
40 establishes less burdensome permit procedures and requirements for permits
41 that are not required to be obtained pursuant to title V of the clean air
42 act. Until the effective date of a rule or ordinance adopted by a board of
43 supervisors pursuant to this section, the control officer, either on the
44 control officer's own initiative or on the request of a permit applicant, may
45 waive requirements that are not appropriate for non-title V sources.